No. 14,585

IN THE

United States Court of Appeals

For the Ninth Circuit

FINTON J. PHELAN, JR., and E. R. CRAIN,
Plaintiffs-Appellants,

vs.

RICHARD TAITANO and HARRY L. MANGERICH,
Defendants-Appellees.

Appeal from the Judgment of the District Court of Guam.
Civil Case No. 69-54.

SUPPLEMENTAL BRIEF OF APPELLEES.

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The attention of the court is invited to Public Law 321 of the 84th Congress, approved August 9, 1955, a date subsequent to the filing of appellees' brief, which amends Section 3401 of the United States Internal Revenue Code of 1954, 26 U.S.C. 3401, to read:

> "Sec. 3401. Definitions.
>
> (a) Wages. For purposes of this chapter, the term 'wages' means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in

any medium other than cash; except that such term shall not include remuneration paid—

* * * * * * *

(8) (A) for services for an employer (other than the United States or any agency thereof)—

(i) Performed by a citizen of the United States, if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(ii) performed in a foreign country *or in a possession of the United States* by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country *or possession of the United States* to withhold income tax upon such remuneration; * * *" (Amendment to prior law indicated by italics.)

This amendment, by adding the reference to "possession of the United States," exempts from the United States withholding tax any income which is subject to withholding by a possession of the United States.

"Possession" includes, of course, the unincorporated territory of Guam. Section 25, Organic Act of Guam; 48 U.S.C., Section 1421c(b).

The legislative history of Public Law 321 shows that Senate Report No. 1244, July 29, 1955, of the Senate Committee on Finance accepted House Report No. 1354, July 23, 1955, of the House Committee on Ways and Means. This states, in part:

"Reasons for Bill

Under present law the wages of a United States citizen employed in Puerto Rico or a possession of the United States may under certain circumstances be reduced by withholding for the income tax of Puerto Rico or the possession as well as for the Federal income tax. This is true even though eventually the foreign tax credit in these cases usually relieves the taxpayer of most or all of the Federal income tax liability. This has presented especially serious problems in the case of Puerto Rico although the problem also exists to a lesser extent in the case of the Virgin Islands *and Guam.* As a result of this double withholding, potential employees are reluctant to take jobs in Puerto Rico or the possessions. Moreover, the Internal Revenue Code already relieves United States citizens who perform services in a foreign country (for an employer other than the United States) from the withholding of the Federal income tax where withholding of a foreign income tax is provided." (Italics added.)

1955 U. S. Code Congressional and Administrative News, No. 14, August 20, 1955, page 4294.

This direct and recent action by the Congress of the United States indicates approval of the decision in *Laguana v. Ansell* (DC Guam, 1952), 102 F. Supp. 919, affirmed (CA 9, 1954), 212 F. 2d 207, certiorari denied, 348 U.S. 830, 75 S. Ct. 51, 99 L. Ed. 32, cited and quoted in appellees' brief, construing Section 31 of the Organic Act as creating a separate territorial

income tax, including withholding provisions. The plaintiff, Laguana, sued for a refund of the amount of the tax withheld from his wages.

Such subsequent congressional action is certainly indicative that this Court in affirming the decision of the District Court of Guam in the *Laguana* case correctly interpreted the legislative intent with regard to Section 31 of the Organic Act. It directly refutes the contrary construction argued by appellants in their opening brief, at pages 48-51, and 59.

In 50 Am. Jur. "Statutes" Section 337, at page 328, it is stated:

> "Subsequent Legislative Action.—The interpretation of a statute by the legislative department of the government may go far to remove doubt as to its meaning. This fact is recognized by the courts which regard it as proper, in determining the meaning of a statute, to take into consideration subsequent action of the legislature, or the interpretation which the legislature subsequently places upon the statute. There are no principles of construction which prevent the utilization by the courts of subsequent enactments or amendments as an aid in arriving at the correct meaning of a prior statute, and it is very common for a court, in construing a statute, to refer to subsequent legislation as impliedly confirming the view which the court has decided to adopt. Indeed, it has been held that if it can be gathered from a subsequent statute in pari materia what meaning the legislature attached to the words of a former

statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute."

Dated, Agana, Guam,
November 10, 1955.

Respectfully submitted,

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